

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 501 of 2001**

- Poonem Kumar, S/o Anjore Das, aged 21 years, Caste Satnami, R/o of village Gunsari P.S. Takhatpur, District Bilaspur, C.G.

---Appellant**Versus**

- State of Chhattisgarh.

---- Respondent

For Appellant	Shri Hemant Kumar Agrawal, Advocate.
For Respondent/State	Shri Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08/11/2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.05.2001 passed by the 5th Additional Sessions Judge, Bilaspur, C.G. in S.T. No.29/2001 convicting the accused/appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 7 years and fine of Rs.100/-, in default to undergo additional R.I. for 5 days.
2. Case of the prosecution in brief is that on 12.11.2000, at around 6:30 pm, when the prosecutrix was all alone in her home and her husband Narendra PW-2 had gone out with his son, aged about three years and brother Bhupendra, aged about four years for showing them dance in the neighbourhood, the

accused/appellant entered the house of the prosecutrix, slammed her on the ground and when she tried to raise cries, stuffed her Saree into her mouth and committed forcible sexual intercourse with her. Thereafter, when the prosecutrix took out the Saree from her mouth and started raising cries, the appellant assaulted her with shoes. Hearing the cries of the prosecutrix, her husband came there upon which the appellant fled from the spot. Thereafter, PW-3 Moolchand, PW-4 Hirdyaram, PW-5 Radhelal, PW-9 Kunjram and PW-10 Lalji also reached the spot whom the prosecutrix and her husband Narendra narrated the entire incident. At the instance of the prosecutrix, FIR Ex.P-1 was registered on the next day i.e. 13.11.2000. During investigation, after obtaining consent of the prosecutrix (Ex.P-3) her medical examination was got done vide Ex.P-5A, according to which Dr. Smt. K. Nehral (PW-7) noticed one old abrasion over forehead of the prosecutrix, one abrasion over her neck, one abrasion over back of her right elbow and swelling over left fore arm. All these injuries were simple in nature.

3. On internal examination, the Doctor did not notice any injury on her private parts. The vaginal slide of the prosecutrix was prepared and sent for medical examination. The Doctor did not give any definite opinion regarding recent rape. After arrest of the accused/appellant his medical examination was also done and as per Ex.P-10, he was found capable of performing sexual intercourse. As per Ex.P-2, Peticoat, blouse and Saree of prosecutrix were seized in presence of witnesses. As per Ex.P-3,

the vaginal slide given by the Doctor was seized. As per Exs.P-8 & P-9 broken pieces of bangles and ear-rings were seized from the place of occurrence. As per Ex.P-16, underwear of the appellant worn at the time of incident was seized. Statements of the witnesses were recorded. After completion of investigation charge sheet was filed against the accused/appellant under Section 376 of IPC. However, while framing charge the trial Court framed charge against the accused/appellant under Section 376 of IPC. The accused/appellant abjured his guilt and prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses i.e. PW-1 Prosecutrix, PW-2 Narendra, PW-3 Moolchand, PW-4 Hirdeyram, PW-5 Radhelal, PW-6 Kishor Kumar, PW-7 Dr. Smt. K. Nehrel, PW-8 Darbar Singh, PW-9 Kunjram, PW-10 Lalaji, PW-11 Dr. Pramod Tiwari & PW-12 J. Toppo, Investigating Officer. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined two witnesses i.e. DW-1 Jethu and DW-2 Dhanaram.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment, hence this appeal.

6. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. In fact, the appellant had sexual intercourse with the prosecutrix with her own free consent and since they were seen in compromising composition by the husband of the prosecutrix Narendra (PW-2), he has been falsely implicated in this crime. It has come in the evidence of the prosecution witnesses that after the incident husband of the prosecutrix Narendra PW-2 was beating the prosecutrix. Further, there is delay in lodging the report by the prosecutrix as the incident took place on 12.11.2000, at around 6:30 pm whereas the report was lodged on 13.11.2000. Though, the prosecutrix has offered explanation for the said delay that it being night on account of being beaten by the accused, report could not be lodged in time, however, there is nothing on record to show that the accused in any way criminally intimidated her from lodging the report. He further submits that no injury was found on the person of the accused/appellant vide Ex.P-5A which itself shows that the sexual intercourse between the appellant and the prosecutrix was a peaceful affair with her consent. So far as injuries found on the person of the prosecutrix are concerned, it has come in the evidence of the prosecution witnesses (PW-3 Moolchand and PW-10 Lal Ji) that soon after the incident when they reached the house of the prosecutrix they saw the husband of the prosecutrix Narendra PW-2 beating the prosecutrix and as such the injuries on the body of the prosecutrix can be the result of beating by her husband. In these circumstances, the accused/appellant deserves to be acquitted of the charge under

Section 376 of IPC.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. Heard counsel for the respective parties and perused the material on record.
9. PW-1 Prosecutrix has stated that on the date of incident when she was all alone in her home and her husband had gone out along with the children, the accused/appellant entered her house and having slammed her on the ground, forcibly committed sexual intercourse with her after inserting her Saree into her mouth. In para 17 she has admitted that when her husband reached home then she started screaming and at that time the accused was sitting there. She states that after seeing her husband the accused run away from the house. She has denied the suggestion that after departure of the appellant her husband beat her. She has also denied the suggestion that the said act of sexual intercourse with the appellant was done with her consent and that the injuries found on her person was due to beating by her husband.
10. PW-2 Narendra, husband of the deceased, states that when he reached near his house he heard the hue and cry of the

prosecutrix and upon entering the house he found both the prosecutrix and appellant in compromising position and that the appellant after seeing him run away from the house. He states that at that time her wife/prosecutrix was weeping. According to him, when Hirdyaram, Moolchand, Lalji and Kunjram reached his house, the prosecutrix informed them about the incident. In para 11 he states that he heard the cries of his wife from a distance of about 30 feet and she continued to cry till he reached the house. There are number of omissions and contradictions in the statement of this witness as compared to his diary statement Ex.D-1. According to PW-3 Moolchand, when he reached the house of the prosecutrix, he found the prosecutrix weeping and that her husband Narendra was scolding her.

11. PW-10 Lalji has also admitted in para 4 that when he reached the house of the prosecutrix he saw that the persons who had already reached there were asking Narendra PW-2 not to beat the prosecutrix.

12. As per Ex.P-5A, Medical Examination of the prosecutrix was done by PW-7 Smt. K. Nehrel and she noticed the injuries on her person as mentioned in para 2 of this judgment.

13. Admittedly, the prosecutrix is a married and well grown up lady of 25 years. If the statements of the prosecutrix PW-1 and her husband PW-2 Narendra are seen, there is material contradiction in their statements as according to the prosecutrix she started screaming when her husband reached home whereas Narendra

states that he heard the cries of his wife/prosecutrix from the distance of about 30 feet and she continued to scream till he reached home. The accused in his statement under Section 313 of Cr.P.C. has taken a specific defence that he went to the house of the prosecutrix on being called by her and had physical relation with her consent and since it was seen by her husband, a false report has been lodged. DW-1 Jethu and DW-2 Dhanaram have also supported the defence of the appellant.

14. So far as injuries found on the person of the prosecutrix are concerned, it has come in the evidence of PW-3 Moolchand as well as PW-10 Lalji that when they reached the house of the prosecutrix, PW-2 Narendra was scolding & beating the prosecutrix and the persons gathered there were requesting Narendra not to beat the prosecutrix.

15. As per medical report of the accused/appellant (Ex.P-10), no scratch mark or any other injury was seen on his body.

16. The incident took place on 12.11.2000, at around 6:30 pm whereas the FIR was lodged by the prosecutrix on the next day at about 7:30 am. The reason given for delay in lodging the FIR was that it being night, they did not lodge report for fear of being beaten by the accused/appellant.

17. In the matter of ***Chinta Ram Yadav Vs. State of M.P., 2017 (1) CGLJ 95***, the prosecutrix, a married lady, aged about 18 years returned home at about 7:30 pm after attending the call of nature when she was caught hold of by the appellant for having sexual

intercourse with her. Hearing her cries, her Jeth Atmaram along with Dinesh and Dhaneshwar rushed to the spot where appellant admitted his guilt and asked for pardon. The appellant's plea was that the prosecutrix was a consenting party, no external or internal injury was noticed on her body and that after being seen in a compromising position with accused, hue and cry was raised. In these circumstances, the Court allowed the appeal and acquitted the appellant of the charges under Sections 376 and 506 Part II of IPC.

18. In the matter of ***Narender Kumar Vs. State (NCT of Delhi)***, AIR **2012 SC 2281**, rape was allegedly committed with the prosecutrix by the side of the road which was busy and well electrified, her version that nobody responded to her hue and cry was found improbable, her testimony that she did not know accused stood belied by other witnesses, her evidence as to place of injuries displaced by medical evidence, FSL report did not support prosecution case and the deposition of the prosecutrix did not inspire confidence. In these circumstances, the Hon'ble Supreme Court observed that conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the Court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In this case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected. The prosecution has to prove its case beyond

reasonable doubt and it cannot take support of weakness of defence. With the aforesaid observations, the appeal was allowed and the appellant was acquitted of the charge under Section 376 of IPC.

19. In the matter of ***Mangu Singh vs. Dharmendra and another and State of U.P. vs. Dharmendra***, reported in ***2016 CRI.L.J. 785***, the Hon'ble Supreme Court while hearing the appeals against acquittal of the respondent/accused having found the defence of the accused probable based on the material available on record, affirmed the judgment of acquittal of the High Court. In Para 12, it was observed as under:-

“12. At this juncture the defence version needs to be examined. The accused respondent stated that they were stopped by two unknown persons and he stopped only because his wife recognized those persons to be from her village. The two persons then attempted to loot them, and in the process two gun-shots were fired- one at Baby Rakhi and another at accused/respondent. Victim Geeta was strangulated to death. Upon perusal of the medical evidences, the gun-shot injury to Baby Rakhi was proved to be at point blank range, whereas no such assertion was made in case of accused respondent's gun-shot wound. The accused respondent stated that he was hit by one fire-shot and he neither knew upon whom second shot was fired, nor did he know as to how his wife was killed. The accused respondent further deposed that he ran towards the nearby hotel for seeking help. The sequence of events and the injuries do not exclude the defence version. It is settled law that the defence needs to only establish its case based on probability, whereas the prosecution has to prove the guilt of the accused beyond reasonable doubt.”

20. In the instant case, if the over all evidence, oral, documentary and medical available on record, are seen from a different angle, it raises a strong suspicion against the appellant. However, it is well settled principle of criminal jurisprudence that graver is the

offence, higher is degree of proof and the suspicion howsoever strong cannot take the place of proof. In the present case, considering the nature and quality of evidence adduced by the prosecution, two views are possible, one favouring the accused and one going against him. This is a basic rule of criminal jurisprudence that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to his innocence, the Court should adopt the latter view favourable to the accused as has been held in the matter of ***Harendra Narain Singh, etc. vs. State of Bihar, AIR 1991 SC 1842.***

21. Thus, in the totality of facts and circumstances of the case, the manner in which the incident of rape is said to have taken place, the conduct of the prosecutrix during the course of alleged crime and subsequent thereto, the contradiction in the statements of PW-1 prosecutrix and her husband PW-2 Narendra, the evidence of PW-3 Moolchand and PW-10 Lalji that when they reached the house of the prosecutrix after the incident they found PW-2 Narendra scolding & beating the prosecutrix, the evidence of DW-1 Jethu and DW-2 Dhanaram, the fact that no injury whatsoever was noticed on the person of the appellant which is suggestive of the fact that no protest was made by the prosecutrix during the said act of sexual intercourse as well as the fact that no injury was found on the person of the prosecutrix and her statement in paras 3 & 17 where she stated that when her husband reached the house, the accused/appellant was

sitting there, the defence taken by the appellant that he committed the sexual intercourse with the prosecutrix with her own consent appears to be probable.

22. On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has failed to prove its case beyond all reasonable doubt against the appellant that he committed rape with the prosecutrix making him liable for conviction under Section 376 of IPC. Therefore, the appellant is entitled for acquittal of the said charge by giving him benefit of doubt.

23. In the result, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellant of the charge under Section 376 of IPC. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge